

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JACK A. AND)
THELMA W. VAUGHAN)

For Appellants: Jack A. Vaughan, in pro. per.

For Respondent: James W. Hamilton
Acting Chief Counsel

Kathleen M. Morris
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Jack A. and Thelma W. Vaughan for refund of personal income tax in the amount of \$153.00 for the year 1973.

Appeal of **Jack A.** and Thelma W. Vaughan

Appellants have been residents of Arlington, Virginia, since October 1973. Prior to that time they resided in California. In their nonresident personal income tax return for the year 1973, appellants apportioned income between California and Virginia. **They** claimed the special tax credit, provided by section 17069 of the Revenue and Taxation Code, with respect to that portion of their income which was attributable to California sources. Respondent determined that appellants were ineligible for the special credit because they were nonresidents at the close of the year 1973. Appellants paid the additional tax in the amount of \$153.00 on November 13, 1974, and filed a claim for refund. The claim was disallowed and this appeal followed.

Subdivision (f) of section 17069 of the Revenue and Taxation Code specifies that the taxpayer must be a California resident as of the close of the taxable year for which the credit **is** claimed. Appellants contend that this residency requirement is discriminatory.

Under a similar set of facts we concluded in Appeal of Norman D. and Harriet P. Lattin, decided February 2, 1976, that the taxpayer had not established the invalidity of the subject statute. In Lattin we cited **Allied Stores of Ohio v. Bowers**, 358 U. S. 552 [3 L. Ed. 2d 480], for the proposition that, in dealing with taxation, the utmost latitude under the Equal Protection Clause must be afforded a state in defining categories of classification. We went on to say:

After reviewing appellants' arguments and the authorities they have cited, we are not convinced that the residency requirement of section 17069, subdivision (f), of the Revenue and Taxation Code creates a classification which results in arbitrary or invidious discrimination which would render the provision unconstitutional. If the appellants do not agree with us, they may seek a judicial determination of this matter.

Appeal of Jack A. and Thelma W. Vaughan

In accordance with our resolution of the Lattin appeal, we must similarly sustain the action of respondent in the instant case.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Jack A. and Thelma W. Vaughan for refund of personal income tax in the amount of \$153.00 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

William L. Bennett, Chairman
George R. Lacey, Member
Paul D. Horn, Member
_____, Member
_____, Member

ATTEST: , *W. W. [Signature]* Executive

Secretary